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1200 EIGHTEENTH STREET, NW  
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301  
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

February 5, 2003

**EX PARTE**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

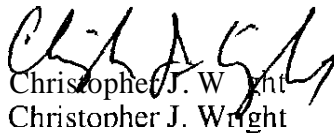
Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On February 4, 2003, Tom Koutsky of Z-Tel and I met with Jordan Goldstein. We distributed and discussed the attached documents at the meeting. Our discussion focused on the impairment new entrants seeking to serve residential and small business customers would suffer without unbundled access to network elements, particularly switching.

In accordance with FCC rules, a copy of this letter is being filed in the above-captioned dockets.

Sincerely,



Christopher J. Wright  
Christopher J. Wright

*Counsel to Z-Tel Communications, Inc.*



# **The Triennial Review, State Role, and UNE-P**

Thomas M. Koutsy

February 4, 2003

CC Dockets Nos. 01-338, 96-98, 98-147



# Structuring a Rule

- Legal process
- State role in making “granular” decisions
- Market definition
- Impairment Standard
- Presumptions and Assumptions
- Consequences



# Principles

- Respect section 271 checklist requirements
- Non-preemptive (as required by section 251(d)(3))
- Pay attention to incentives
  - BellSouth: “We have incentive to keep them on our network”
  - Admission counsels caution in “transition” gamesmanship
- How will it work in practice (e.g., use restrictions)?
- Order of proof
- Timelines
- Waivers v. Exceptions
- Market Definition: service-specific
  - Demand-side requirements of above groups vary significantly – and, in turn, impact supply-side requirements
  - Cannot confuse alternative sources of supply used for some services as alternatives for others



# Presumptions and Assumptions

- Purpose of presumptions?
- To be of value, presumption must capture several *accurate* factors
- “Central office size” presumptions flawed
  - At best, only captures *one* factor (density) which is, incidentally, *not* the most reliable indicator of potential CLEC success
- “Counting switches” also flawed
  - Ignores operational issues w/UNE-L
  - Ignores economic factors, which are *service-specific*
  - What services are switches used for?
  - Are the switches held by bankrupt companies?



# Proposed Impairment Framework

1. Begin with market definition – the “service” requesting carrier “seeks to provide”
  - E.g.: analog dialtone services  
(Z-Tel Comments Attachment A, or >139MM lines)
  - Consistent with FCC precedent in prior Orders
  - Provides “granularity” *USTA* requests
2. What are the demand-side requirements of “serving” that “market”?
3. What are supply-side requirements of “serving” that “market”?
4. Without unbundled access, can entrant serve as many customers within 2 years as with unbundled access?



## Ford Reply Decl. Section III

*Impairment exists when a lack of access to an ILEC network element reduces a CLEC's output by a small, but significant, and non-transitory amount*

- Complies with *USTA* -- a fact-based analysis
- Requires FCC to consider whether alternatives to element...
  - Are available from other sources in sufficient quantity and quality
  - Can be utilized by entrant in seamless manner
  - Can be implemented without adversely affecting customer service *at service level demanded by consumers for that service*
  - Can be implemented without adversely affecting competitive output
- Flexible enough to consider prices, the “profitability” of particular entry strategies, the “difficulty” of self-provisioning
- “Significant and non-transitory” are objective “limiting principles” grounded in antitrust law
- Allows for state input and assures no significant customer dislocation



# The “Analog Mass Market”

1. In BOC Merger Orders, FCC has identified “mass market” for local services that includes residential and small businesses
2. Demand-Side Characteristics of the Mass Market
  - Low revenue per month (\$40-80/line)
  - Highly reliable service (turn **up** service quickly, repairs <24 hrs, etc.)
  - Regulatory requirements (lifeline, installation/disconnection service requirements)
  - Diffuse consumer base
  - No long-term contracts/month-to-month service
  - High churn (5%-10%/mth)
3. To profitably serve Mass Market, carriers must...
  - Keep costs of customer acquisition low
  - Have reliable, electronic method of service provision
  - Be able to service churn profitably
  - Sell through mass market advertising techniques (ubiquitous coverage with consistent product)





# We're Going To Keep Raising the Bar

*Today, Z-Tel uses UNE-P to offer...*

*Voice Recognition Dialing – launched on February 3rd*

Unlimited calling—no more long distance or local calling charges

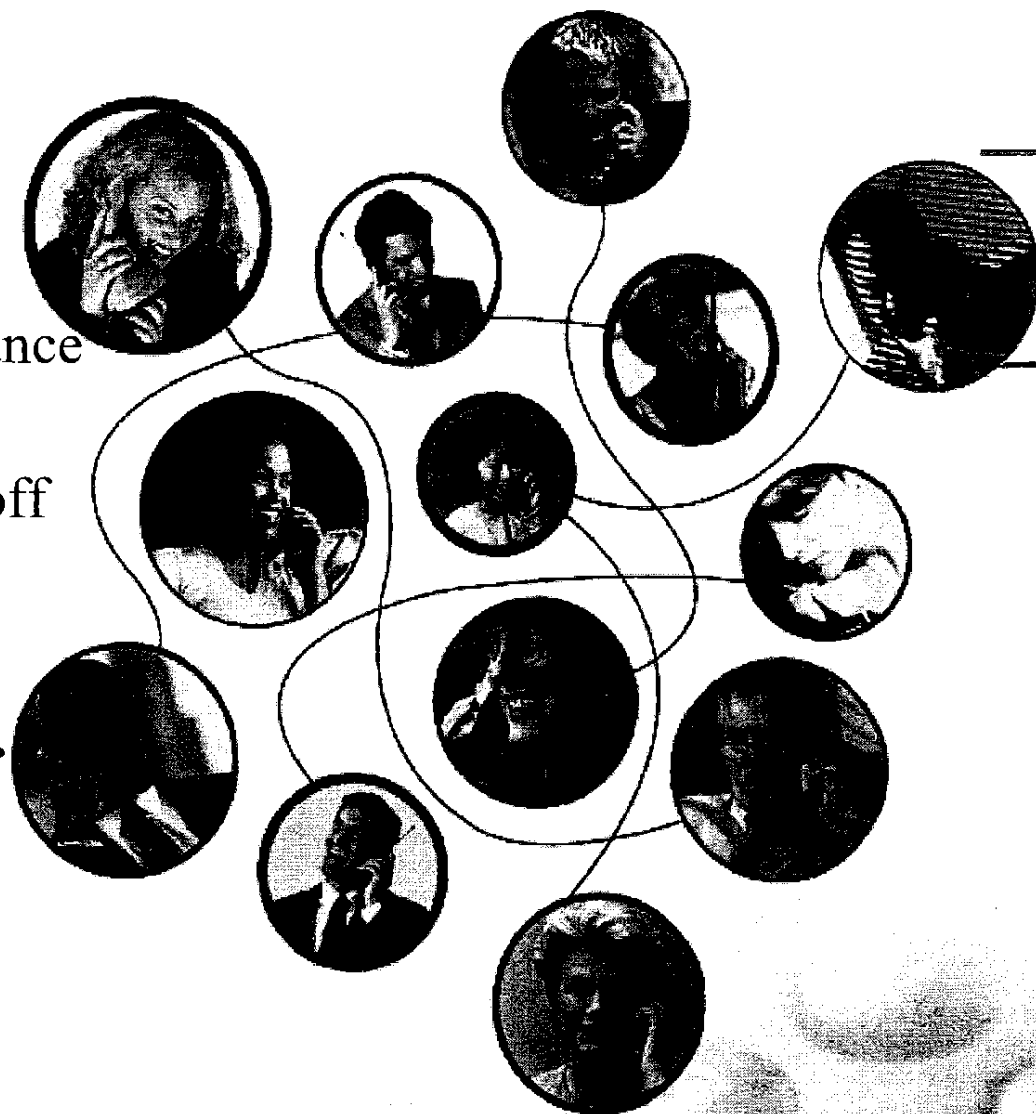
Immediate cost savings of 15 to 25% off combined bills

Web-based call management

*Tomorrow, Z-Tel will use UNE-P for.*

Family and community conferencing, directory and message services

Exciting small business services





**For More Information...**

**Thomas M. Koutsky**

Vice President, Law and Public Policy

Z Tel Communications, Inc.

(202) 955- 652

[tkoutsky@z-tel.com](mailto:tkoutsky@z-tel.com)

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## North County Communications

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**Do you need co-location space in Tokyo?**

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## North County Communications

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**We have rack space and shelf space available for colocation (co-location) in our Tokyo data center for companies that need *to* have a Tokyo presence with excellent telecom connectivity. We have 200 pairs of analog telephone cable and several fiber optic strands from NTT, perfect for INS-Net 1500 (PRI) service.**

**Please contact jimmy @ nccom.com for more information.**

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